Ryder Distribution Resources, Inc. *and* Communications Workers of America, Local No. 3263. Cases 10–CA–24585 and 10–CA–24644

March 19, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On October 5, 1990, Administrative Law Judge Philip P. McLeod issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that in the factual portion of his decision, the judge erroneously stated that Jones was employed by the Respondent from July 1988 until January 1989 rather than January 1990.

We correct the judge's characterization of the Respondent's burden of proof under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), which appears in his analysis of the alleged unlawful discharges. In this regard, we find that the Respondent did not meet its burden of demonstrating that it would have discharged its employees even in the absence of protected conduct. With this clarification, we are fully satisfied that the judge's analysis was consistent with the standard set forth in *Wright Line*.

Regarding the application of *Wright Line*, in agreeing with the judge's finding that the Respondent had knowledge of Gibson's prounion activities, we rely on Gibson's credited testimony that he told both Waggoner and Bracewell that although he arrived at the polls late and could not vote, he was ''for the Union.''

[2] With the following modifications, we agree with the judge's conclusion that in discharging Gibson in violation of Sec. 8(a)(3) and (1) of the Act, the Respondent departed from its past practice of permitting local management to handle traffic offenses and inaccurate reports of violations (ROVs) and of displaying leniency toward traffic offenses and falsifications of ROVs. First we find, contrary to the judge, that the Respondent has rebutted the General Counsel's evidence of Gibson's disparate treatment compared to Kelly and Holloway. Waggoner's uncontroverted testimony established that Kelly, who was placed on probation after being convicted for driving under the influence of alcohol (DUI), did not falsify his ROV like Gibson but immediately informed Waggoner of his offense. After Kelly indicated that he really needed a job, Waggoner discussed Kelly's good work record with a superior and the decision was made to place him on probation. By contrast, we note that additional violations appear on Gibson's record. Further, although Holloway was not disciplined after pleading nolo contendre to a DUI citation, Waggoner's testimony established that Holloway received his conviction in June 1986 as a driver for Saunders Leasing Company, whose business was subsequently purchased by the Respondent. We therefore find that, with respect to these two employees, the Respondent has explained the apparent disparity in its reliance on Gibson's DUI conviction as a reason for discharge. See generally *Brownsville Garment Co.*, 298 NLRB 507 (1990) (citing *Philips Industries*, 295 NLRB 717 (1989)).

Finally, in view of the conflicting evidence concerning the Respondent's disciplinary procedures, we do not rely on the judge's finding that none of the alleged discriminatees was disciplined in accord with the progressive system described by Ashley.

[3] We shall modify the recommended Order to conform to the violations found.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Ryder Distribution Resources, Inc., Norcross, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs.

''(c) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit regarding the discharges of employees Donaldson, Gibson, Nix, and Jones, and provide the Union, on request, information necessary for collective bargaining:

> All regular full time drivers employed by the Respondent at its AT&T account in Norcross, Georgia, but excluding all professional employees, clerical employees, dockmen, guards and supervisors as defined in the Act.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate our employees about their activities on behalf of Communications Workers of America, Local No. 3263, or any other labor organization.

WE WILL NOT threaten our employees with loss of jobs because of their selection of Communications Workers of America, Local No. 3263, as their collective-bargaining agent.

WE WILL NOT discharge, refuse to reinstate, or otherwise discriminate against our employees because of their activities on behalf of Communications Workers of America, Local No. 3263, or any other labor organization.

WE WILL NOT refuse to bargain, on request, with Communications Workers of America, Local No. 3263, regarding the discharges of employees in the below-described collective-bargaining unit.

WE WILL NOT refuse to bargain with the Union as exclusive collective-bargaining agent for our employees in the below-described unit, by failing to furnish the Union with requested documents which are material to its responsibilities as bargaining agent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer immediate and full reinstatemet to employees Donaldson, Gibson, Jones, and Nix to the positions they formerly held or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges.

WE WILL make Donaldson, Gibson, Jones, and Nix whole for all losses of earnings they suffered by reason of our dicrimination against them, plus interest.

WE WILL expunge from our records any reference to our discharge of Donaldson, Gibson, Jones, and Nix and all references to absences and tardies of Donaldson, Gibson, Jones, and Nix during 1989, and WE WILL notify Donaldson, Gibson, Jones, and Nix in writing of our action in that regard.

WE WILL, on request, bargain with Communications Workers of America, Local No. 3263, as exclusive collective-bargaining representative of our employees in the below-described bargaining unit regarding the discharges of unit employees and furnish requested documents which are relevant to the Union's bargaining responsibilities:

> All regular full time drivers employed by us at our AT&T account in Norcross, Georgia, but excluding all professional employees, clerical employees, dockmen, guards and supervisors as defined in the Act.

RYDER DISTRIBUTION RESOURCES, INC.

B. Renee Sanderlin, Esq. and *Josephine Miller, Esq.*, for the General Counsel.

Richard H. Allen, Jr., Esq., of Memphis, Tennessee, and *Lawrence W. McDonald*, of Miami, Florida, for the Respondent.

DECISION

STATEMENT OF THE CASE

PHILIP P. MCLEOD, Administrative Law Judge. This case was heard in Atlanta, Georgia, on June 13 and 14, 1990. The charge in Case 10–CA–24585 was filed on February 1, 1990. The charge in Case 10–CA–24644 was filed on March 8 and amended on April 6, 1990. An amended consolidated complaint issued on April 16, 1990.

The complaint alleges that Respondent engaged in conduct violative of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

On the basis of the entire record, my observation of the witnesses and their demeanor, and after considering briefs filed by counsels for the General Counsel and Respondent, I make the following findings.

Respondent admitted that it is, and has been at material times, a Florida corporation with a business located in Norcross, Georgia, where it is engaged in the business of providing drivers for AT&T; that, during the past calendar year, a representative period, it provided services to AT&T at its Georgia operation valued in excess of $50,000; during the same period AT&T received gross revenues in excess of $500,000; and, during the same period, Respondent purchased and received goods at its Norcross operation valued in excess of $50,000 directly from customers located outside the State of Georgia; and that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent admitted that the Charging Party (the Union) is, and has been at material times, a labor organization within the meaning of Section 2(5) of the Act.

Respondent in its answer admitted that the following described bargaining unit is appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act, that in an election on October 2, 1989, a majority of the employees in the below-described unit selected the Union as their representative for collective-bargaining purposes and that, on October 11, 1989, the Regional Director for Region 10 of the Board, certified the Union as exclusive collective-bargaining representative for the employees in the below-described unit:

> All regular full time drivers employed by the Respondent at its AT&T Account in Norcross, Georgia, but excluding all professional employees, clerical employees, dockmen, guards and supervisors as defined in the Act.

The Union's Out-State Director James Adler testified, and Respondent in its opening statement agreed, that it entered negotiations with the Union on January 9 and reached agreement on May 30, 1990.

I. THE UNFAIR LABOR PRACTICE ALLEGATIONS AND THE EVIDENCE

A. *The 8(a)(1) Allegations*

The complaint alleges that Respondent interrogated and threatened employees with loss of jobs and created the impression of surveillance of its employees union activities.

Interrogation and Threat of Loss of Jobs

James Waggoner: David Gibson testified about a phone conversation he had with Distribution Manager Waggoner when the Union first started up. Gibson testified that it was before the petition, which was filed on September 12, 1989, although he could not recall whether it was ''a week, two weeks or what before.'' Gibson described the conversation:

> The first time is when the Union was first started up. I was in Virginia and I called in and Jim Waggoner has

a phone and they said that he wanted to talk to me. I asked him about what and he said, well, I guess you heard about the Union? I said, yeah, I heard something about it once.

I told him that Gene [Ashley] had stopped and introduced the Union to me at the gate as I was leaving, going home. So he said, well, I guess you know if the Union get in we're out. I said, well, I don't know about that. So he said, well, I want you to make up your mind—No, he didn't say he wanted me to make up my mind then. He said, I want you to think about it. I said, well, Jim, I think I'm grown enough to know what I want to do, whether I want to join the Union or not. That was the end of that conversation.

James Waggoner recalled a conversation with Gibson in Waggoner's office regarding the Union. According to Waggoner:

> Mr. Gibson told me that, Jim, he says I want to let you know that I'm not for this thing that they're doing. You know, the thing that I was—I guess he was referring to the union because he says, I've got a mind of my own and I know how I can vote. He says, you helped me out and I appreciate what you did for me in the past and I'm not gonna forget it.

Gibson also testified about a second occasion, just before the Union was voted in, when he had a conversation with Distribution Manager James Waggoner. Gibson was in the office to be dispatched along with employees Lett and Mobley. Gibson testified:

> The time we were talking in his office he said that AT&T did not want a union trucking company in because if they go on strike we would have to strike, too. . . .
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> . . . .
>
> We started off talking about a raise and Jim told us that we wouldn't—that we would not get a raise at that time. Then he told us about a penny that we would get but we would lose something else some place else.
>
> Then he said, well, you don't need a raise no way because you're trying to get this union. He said all this is out of my hands now. Then from that to Mobley, and we all was just talking.
>
> John—So he got up and got some documents or something and brought back in and showed us where Ryder doesn't make the money that we drivers think they make. He showed us the documents and all and then we started talking about the different things we had to pay.
>
> The conversation just went about a lot of different things but the Union also was involved.
>
> . . . .
>
> Well, he explained to us how that AT&T did not want a union trucking company in and he was explaining the disadvantages that it would be to AT&T if a union trucking company got in.
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> . . . .
>
> Well, the disadvantages about if—if the Union—if the trucking company get in that is union, AT&T being union, if they go on strike we would have to strike. This is the reason that AT&T did not want a trucking company that is union handling their contract and they would probably forfeit the contract.
>
> . . . .
>
> One thing I remember he said about—about we getting our raise, the raise that we were getting when we asked for the raise. He said that if we hadn't started a union that he could probably do something.
>
> He told us about he would call Mr. McDonald to come—Mr. McDonald was coming down to talk to us from Miami and that's about the Union. He did come down, and . . . .

On cross-examination Gibson was asked about the conversation involving Waggoner, Lett, and Mobley and he added,

> [Waggoner] told us that, well, you guys are getting a union now and the raise—about how we was gonna get this penny but it would be taken away with something else or if you get a violation or something like that.
>
> The way I understood it is that this will be taken away from you. We were asking him saying, well, what good is it giving to us if you're gonna take it? Give us here and take it there.
>
> . . . .
>
> He said that it was out of his hands to get us a raise now.
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> . . . .
>
> Because the petition had been filed with the Union.
>
> . . . .
>
> Yes. But he didn't say that the Union could do this. He said that this could happen.
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> . . . .
>
> He was telling us about when you get a penny on the mile then if you get a citation—I'm just making this as an example—
>
> Q. Did he make that as an example?
>
> A. Not about the citation, but we can lose it on our bonus.
>
> Q. But he was talking about the give and take of negotiation, wasn't he?
>
> A. Right, right.

James Waggoner recalled the above conversation. However, Waggoner denied that the Union was included in the conversation. Waggoner did respond to a question about when the drivers would get a raise, by saying they now have a negotiator who would have to deal with that problem. According to Waggoner, he simply responded to questions posed by Lett, Mobley, and Gibson, after they came into his office. Waggoner testified that he did not remember any comments regarding AT&T and a strike, at that time.

Malcolm Jones testified about a conversation with Waggoner about 3 weeks before the election:

> During one of my trips I was talking to the dispatcher on the phone and after I finished talking to the dispatcher Jim Waggoner came on the phone and he was asking me had I heard about the Union. I told him yeah. He said it wouldn't be a good idea if the Union

> came in because if the Union came in AT&T would cancel their contract with us.
>
> . . . .
>
> He said he was talking to some other employees about the Union, trying to see how they feel about it. He said if—I—He said the other guys—the other people that he was talking to—were saying that they were in favor of the Union but if it would come around they wasn't going to vote for it.
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> Gene Ashley, who is currently employed by Respondent as a truckdriver, testified that he had several conversations with Waggoner about the Union. The first conversation occurred in the drivers' lounge in early September 1989:
>
> There was three or four of us sitting around talking about the Union and we didn't know what was going to happen. We didn't know the procedures and everything that it went by.
>
> We was sitting around talking. Jim [Waggoner] come out and he pulled up a chair and sat down. He sat right next to me. He got involved in the conversation and he looked over at me and he said, Gene, with your bad heart you don't want to get involved in this. You need medical attention down the road. You can't afford to lose your medical coverage.
>
> I just got up and walked out of it. I didn't want to hear him.

James Waggoner recalled exchanging comments with Ashley regarding Ashley's health. However, Waggoner recalled that Ashley made a comment about Waggoner being out of shape. Waggoner responded because Ashley was smoking and Waggoner said, ''the cigarettes are gonna kill you.'' Nothing was said regarding the Union.

Ashley recalled a second conversation with Waggoner in early September:

> We was sitting there talking about what was going to happen when the Union come [sic] in. He was afraid that AT&T did not want union drivers in there, that they had stipulations in their contract that we could not become in the same union they are.
>
> He said what Ryder would just take their trucks out against the wall, strip the sides off of them, take them out of service and put them up for sale and Thom and himself and me and all of us would be out of a job.

Distribution Manager Waggoner testified that he did not remember having the above conversation.

The was a third conversation involving Ashley and Waggoner in September before the election. Ashley testified:

> Mike Holly was there. We stayed after work and was talking. [Waggoner] says Ryder is not going to sign a contract. He says all you're going to do is put the forty-two people out of work.

James Waggoner recalled a conversation involving Holly and Ashley in the drivers' room:

> Gene was in there. He would make a statement, have you heard anything from Mr. McDonald? Well, things are gonna change when the Union gets in. Those type of questions.
>
> To be perfectly honest with you, I got fed up with it. So he made a statement that things are gonna change. I said, look, Gene, I said more power to you. I said if you guys voted in the Union, I said, if you're happy with that that's great. It doesn't matter what I say. It doesn't matter what Miami says. It doesn't matter what anybody says. If that makes you happy, fine. I turned around and walked back into the office.

On cross-examination, Gene Ashley testified about a conversation with Jim Waggoner in Waggoner's office before the election. Ashley went into Waggoner's office to ask Waggoner about having Ashley's truck repaired. Waggoner brought up the Union during the conversation,

> He told me you guys are gonna have to get away from this union. You're gonna have to get it decertified. It's not gonna do that. I'm gonna lose my job. Thom's gonna lose his job. You're gonna lose your job. We're all gonna be out of a job.

B. *The 8(a)(3) Allegations*

David Gibson: David Gibson was employed by Respondent as a truckdriver from August 1988 until January 1990.

Gibson testified that he campaigned on behalf of the Union by talking with other employees, signing an authorization card, and attending two union meetings. As shown above in the section dealing with 8(a)(1) allegations, Gibson testified about a phone conversation he had with Distribution Manager Waggoner when the Union first started up in which Waggoner asked if Gibson had heard about the Union.

Also as shown above, on another occasion, just before the Union was voted in, according to Gibson, he had a conversation with Waggoner along with drivers Lett and Mobley dealing with the Union.

Gibson recalled a conversation involving Distribution Supervisor Thom Bracewell and two or three drivers on the day after the October election,

> I told him that I, you know, voted for the Union but Jim [Waggoner] told me I was too late [when I arrived at the polls to vote]. I said, well, my vote is still in. I am for the Union. Just—What Thom [Bracewell] said, well, I wish you guys luck whatever way it go but I don't really see where you're gonna benefit.

Thom Bracewell denied that he heard Gibson make the above comments.

Gibson admitted receiving a traffic citation which he did not include on a ROV he completed on April 20, 1989. Gibson omitted a DUI citation he received in February 1989 while driving his own personal car. He admitted that he did not include that on his ROV because he did not want Respondent to know about it. He said that he was afraid that if Respondent knew about his DUI, he may be fired.

Although the police officer retained Gibson's license, he was given a ''citation with a State seal on there to drive, to continue driving with that. I can drive with that.''

Gibson testified that he was convicted of the DUI offense but his sentence involved only a fine and did not include sus-

pension of driving privileges. He was placed on probation and his license was not released until he completed driving school and paid his fine.

On December 21, 1989, Gibson was suspended. He testified,

> I just came in off a run and doing my logs and paperwork and Jim Bracewell [sic] told me as soon as I finished he would like to talk to me. I said, okay. When I finished and turned my paperwork in, I went to his office and he asked me, he said, is Gene Ashley out there? He said, you might want a Union representative in here.
>
> . . . So I said, yes, Gene Ashley is out there. He asked me did I want to get them. So I got Gene Ashley and he went in with me.
>
> That's the time he showed me the paper and said you failed to put a DUI on your report to get this MVR. He said that he's gonna have to let me go. At that time Gene asked him, he said Thom, is that his first offense of anything? He said yeah. He said why can't you give the guy a suspension, three-day suspension or something? He said this being Christmas time and everybody need to work.
>
> He said well, Gene, I've got to do what I've got to do. So I said well, I'll let you have this review. So I signed the copy that he gave me for it to be reviewed. He said. . .

Gene Ashley testified in corroboration of the above testimony by Gibson. Thom Bracewell's testimony did not differ in material respects from that of Gibson and Ashley.

Under cross-examination, Gibson recalled that during the conversation when Bracewell suspended him, he made the following comment to Bracewell,

> Okay. What I explained is that they had pulled one (MVR) in April. I don't know when they pulled it, but when I signed this they had gotten the MVR then. If they were gonna fire me, why wouldn't they fire me then.
>
> . . . .
>
> [Bracewell] said that's the way it is. I've got to do what I've got to do.

Respondent wrote Gibson on December 21, 1989, regarding his suspension,

> According to your MVR dated 12–14–89, you were charged with a DUI on 2–5–89. Also, you have received 5 other traffic violations over the past 2 plus years, This is not acceptable under Ryder standards. This letter is to inform you that I have no other recourse but to suspend you from driving a Ryder truck until your situation can be reviewed further.

Gibson returned 2 weeks later to inquire about his status,

> I asked [Jim Waggoner in the presence of Thom Bracewell and Gene Ashley] what was the—what were their decisions. He said, buddy, I'm gonna have to let you go. Gene said just like that? He said Jim can't you give the guy a warning letter or something? Jim said, well, it's out of my hands. He said if the Union weren't in, he said, I probably could do something, he said, but the Union is in.
>
> Gene came back and said, well, if that's the case you're gonna have to let everybody here go. He said, if that's what I have to do, that's what I'll do. He told me that Thom Bracewell didn't have time to make up—give me a dismissal notice where they had let me go. He said, well, they'll send me one in the mail.

Gene Ashley testified that he told Waggoner during the above meeting,

> I told Waggoner if you fire this man for this little rinky dink thing you're gonna have to fire eighty percent of your fleet. He said, I hope not but if I do I will.
>
> . . . .
>
> [Waggoner] said you guys wanted a union and this is what you got and things are going to be done on a different scale than they've been done before.

James Waggoner also testified about the above conversation. According to Waggoner, after Ashley said he could not believe they were going to fire Gibson over a silly little violation, Waggoner responded,

> Gene, I've got to be fair. I've got to treat everyone the same. I cannot treat one person different from the other.

Waggoner denied that the word union was mentioned in that conversation.

Thom Bracewell testified that he did not hear Waggoner use the word union in the above conversation. His account of the conversation corroborated Waggoner's version.

James Waggoner, in agreement with Lawrence McDonald, testified that McDonald was the deciding official in the discharge of Gibson.

Ernest E. Donaldson: Donaldson was employed by Respondent as a truckdriver.

According to Donaldson he was the employee that called the Union and set up a meeting between the Union and employees. Donaldson attended that meeting. Donaldson recalled that the meeting occurred sometime in August 1989. He solicited and signed about 15 employees to pledge cards and he passed out union literature. Donaldson wore a union cap to work from the time of the first meeting through the time of the election. Donaldson also wore a union button.

Respondent discharged Donaldson, alleging that he had failed to properly report a traffic violation. Donaldson testified that once each year, each truckdriver is required to fill out a ROV form for the Department of Transportation.

On April 6, 1989, Donaldson completed a ROV. On that report he listed two traffic violations.

Ernest Donaldson admitted that he had been awarded a ticket on April 5, 1989, for speeding and no insurance in a personal car, which he did not include on his April 6 ROV. Donaldson testified that he did not include that ticket because he planned to contest the ticket in court.

The record shows that although Donaldson was cited on April 5, he was not convicted of that traffic violation until April 26, 1989.

According to Donaldson he did tell his supervisor, Thom Bracewell, about the ticket when he arrived at work on April 5. Donaldson had another conversation with Bracewell about that ticket on the day after his discharge,

> I called him back the next day and told him that I verbally remember telling him about the speeding ticket and insurance because I was talking to him about it. He said he thought he remembered something about it but it didn't matter because Miami had already told them to terminate me.

On January 3, 1990, Donaldson was called into Distribution Manager James Waggoner's office and told that he had failed to include his April 5 speeding ticket on the April 6 ROV. Donaldson was told that he was being discharged because of that omission. According to Donaldson he had two conversations with Waggoner regarding his discharge and the Union before he left Respondent's property:

> I was told then [by Waggoner], well, I told you about this Union. I did not reply and went and got my stuff out of the truck. . . .
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> I told Mr. Ashley that they had dismissed me. Me and him went back upstairs to Mr. Waggoner's office and he asked him about my case and—
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> . . . .
>
> Gene Ashley asked Mr. Waggoner about discharging me and asked him if he could put me on a paper suspension. [Waggoner] said, y'all asked for this Union. It's gonna be by the book now.

Gene Ashley also testified about the above comments by Waggoner. After Ashley asked Waggoner to put Donaldson on paper suspension,

> [Waggoner] told me, no, it's not gonna be like that no more. You guys wanted a union. It's gonna be different from now on.

James Waggoner denied that he had a second conversation regarding Donaldson's discharge with Donaldson and Ashley and Waggoner denied telling Donaldson that he was discharged because of the Union.

Donaldson was given a letter from Transportation Supervisor Thom Bracewell regarding his discharge,

> To be in compliance with the Federal Motor Carrier Safety Regulations, Section 391.27, Ryder Rental has forwarded to us your MVR dated 12–14–89. That MVR shows you were issued a citation on 4–5–89 for speeding in Georgia.
>
> In accordance with the Truck Lease and service Agreement between Ryder Truck Rental and Ryder Distribution Resources, and the Federal Motor Carrier Regulations, you are no longer qualified to operate a commercial motor vehicle or any vehicle owned by Ryder.
>
> Therefore, please be advised that your employment with Ryder Distribution Resources is hereby terminated effective immediately.

Malcolm Jones: Malcolm Jones was employed by Respondent as an over-the-road truckdriver from July 1988 until January 1989.

Jones testified that he signed a union authorization card and talked to some five employees about the Union. However, Jones testified that he was not aware that Respondent had reason to suspect that he favored the Union.

About 3 weeks before the election, Jones had a phone conversation with Jim Waggoner,

> During one of my trips I was talking to the dispatcher on the phone and after I finished talking to the dispatcher Jim Waggoner came on the phone and he was asking me had I heard about the Union. I told him yeah. He said it wouldn't be a good idea if the Union came in because if the Union came in AT&T would cancel their contract with us.
>
> . . . .
>
> He said he was talking to some other employees about the Union, trying to see how they feel about it. He said if—if—He said the other guys—the other people that he was talking to—were saying that they were in favor of the Union but if it would come around they wasn't going to vote for it.

Jones completed a ROV on June 8, 1989. He did not show any traffic violations on that ROV. Jones admitted that it was his understanding of Respondent's policies, that drivers were required to notify Respondent within 30 days of receiving a traffic citation and that the drivers were required to list all traffic citations on their annual ROV.

On September 5, 1988, Malcolm Jones was cited for speeding in Virginia. He was in a company vehicle. On September 22, 1988, Jones was convicted.

On January 3, 1989, Jones was told to come in and see Thom Bracewell,

> So I went up to the office. He called me in and he informed me that an employee had been terminated for not reporting a ticket and some drivers were complaining that if one driver was gonna be terminated for this then all of them that hadn't reported their tickets should be terminated also. He said due to that fact that he was gonna have to let me go.
>
> . . . .
>
> Well, he showed me a copy of my ROV, a copy of my MVR and a termination letter.

Jones' termination letter stated,

> To be in compliance with the Federal Motor Carrier Safety Regulations, Section 391.27, Ryder truck rental has forwarded to us your MVR dated 12–14–89. That MVR shows you were issued a citation on 9–5–89 for speeding in Georgia. In accordance with the Truck Lease and Service Agreement between Ryder Truck Rental and Ryder Distribution Resources, and the Federal Motor Carrier Regulations, you are no longer qualified to operate a commercial motor vehicle or any vehicle owned by Ryder.
>
> Therefore, please be advised that your employment with Ryder Distribution Resources is hereby terminated effective immediately.

William D. Nix: William Dewayne Nix worked for Respondent for 4-1/2 to 5 years before he was discharged on January 3, 1990.

Nix signed a union authorization card before the election. On an occasion before the election, Nix asked for a union cap while he was in the drivers' lounge. Thom Bracewell and Jim Waggoner were standing in the hallway when Nix asked for the union cap.

On October 23, 1989, Nix completed a ROV. He did not list any traffic violations on that ROV. Nix admitted that he had received a traffic citation for an illegal left turn on April 27, 1989.

William Nix testified that it slipped his mind that he had received the ticket when he completed the ROV. However, according to Nix, Respondent knew about the ticket because he gave the ticket to Thom Bracewell after April 27 when he returned to the terminal from that trip, and asked that Respondent pay his fine.

Nix argued that Respondent should pay the fine because he was following a boomtruck as part of his job duties.

The discharge incident was covered by Nix's testimony,

> Thom had called me in to the office and I got down there and he called me in the back room, closed the door and he told me. He said, Wayne, this is the hardest thing I've ever had to do. I said, what are your trying to tell me, Thom, are you firing me? He said, yeah, and he handed me that MVR. I said, for illegal left turn? I said, Thom, this is a bunch of junk. He said, well, I told you the innocent guys are gonna get hurt because of that union and this is part of it and it's out of my hands.
>
> . . . .
>
> Well, he told me that, you know, he'd give me a excellent recommendation wherever I went, and if it worked out that I'd come back to work that they'd welcome me back with open arms.
>
> Q. Did he say anything about when you come back to work?
>
> A. No, he just said when this union bit is over.

Thom Bracewell admitted the above conversation, but Bracewell denied saying anything to Nix about the Union.

Respondent gave Nix a letter regarding his discharge,

> To be in compliance with the Federal Motor Carrier Safety Regulations, Section 391.27, Ryder Truck Rental has forwarded to us your MVR dated 12–14–89. That MVR shows your were issued a citation on 4–27–89 for improper turning in Georgia.
>
> In accordance with the Truck Lease and Service Agreement between Ryder Truck Rental and Ryder Distribution Resources, and the Federal Motor Carrier Regulations, you are no longer qualified to operate a commercial motor vehicle or any vehicle owned by Ryder.
>
> Therefore, please be advised that your employment with Ryder Distribution Resources is hereby terminated effective immediately.

Before leaving the terminal, Nix ran into Jim Waggoner,

> I asked Jim what the heck was going on. He said, I told you guys when you started this union a lot of innocent people is gonna get hurt and this is part of it. I said, Jim, what's gonna happen? He said, I don't know. He said, before we could sit down and hash this out but now it's out of my hands.

James Waggoner denied that he had the above conversation with Nix.

Respondent offered the testimony of its manager of labor relations and its distribution manager to show how it came to discharge its drivers Donaldson, Gibson, Jones, and Nix.

Respondent's manager of labor relations, Lawrence W. McDonald, testified that he made the decision to terminate the four alleged discriminatees. McDonald testified,

> They were terminated essentially because a driver who falsifies or does not complete their ROV's are deemed not to be qualified to drive under Federal Motor Carrier Act. So because they weren't qualified to drive and because of who we are and what we do, I made a decision to terminate them. That obviously extends to increase risks and liability for insurance purposes as well as interstate commerce or right to engage in interstate commerce and to operate on the roads.

Subsequent testimony by McDonald illustrated that he had advised Jim Waggoner that during the union activity, he (McDonald) should be advised of all discharges. On December 18 or 19, 1989, and in January 1990, Waggoner phoned McDonald. Waggoner told McDonald that he had discovered instances where drivers had not included traffic citations on their ROV's. The first of those instances involved David Gibson's DUI citation.

McDonald testified that Gibson's situation was compounded by the fact that his involved a DUI citation.

According to McDonald, Respondent's ability to operate would be jeopardized if they permitted falsification of ROV's.

One other employee—a driver at Ryder's Georgetown, Kentucky terminal—was also discharged. Joseph Sparrow was discharged on March 28, 1989, because ''it was determined [Sparrow] falsified not only this [ROV], but [Sparrow's] application as well.''

Lawrence McDonald could not recall whether there was an ongoing union campaign at Georgetown, Kentucky, at the time of Sparrow's discharge.

Distribution Manager James Waggoner explained that before 1989, Respondent would request each employee's MVR on that employee's employment anniversary date. However, in early 1989, Respondent decided to request all employee MVR's during December 1989. In accord with that decision, all MVR's were requested for all Waggoner's accounts in December 1989.

In addition to the AT&T account, which is the one involved in the 1989 union campaign, Waggoner identified accounts with Ryerson Steele, Singer, and Herman Miller.

Waggoner made his request for MVR's, for all his accounts, to Ryder Truck Rental (RTR). Waggoner testified that RTR supplied those MVR's to him in three different batches.

The first group of MVR's were given to Waggoner around December 14, 1989. At that time he noticed that one MVR

indicated a DUI that had not been included in the driver's ROV. That record involved David Gibson.

After being presented with the first batch of MVR's including Gibson, Waggoner admitted that he went over all the Norcross account employees' MVR's because he was concerned with a Union being on the scene. Waggoner admitted that he did not go over MVR's for employees of other accounts throughout the State.

In accord with instructions he had received from Lawrence McDonald, Waggoner phoned McDonald regarding Gibson's MVR. Waggoner testified that McDonald told him to terminate Gibson. Waggoner asked to delay the termination because Gibson was out on a trip and Waggoner wanted to look further into the matter. McDonald then told him to suspend Gibson and look into the matter.

When RTR supplied the second batch of MVR's, Waggoner discovered falsifications in the cases of Donaldson, Nix, and Jones. Waggoner testified that he phoned McDonald and,

> So I in turn called Mr. McDonald again immediately and I said, Mr. McDonald, we've got another problem. I said, I've got three MVR's here on three employees that shows that they falsified their ROV.
>
> He said, that's a terminating offense. He said, we can't show any partiality, no different than—He said, by the way, what did you ever determine on David Gibson? I said, I terminated him. I said, I gave him a suspension. We talked to him. I terminated him.
>
> He said, we can't show any partiality over David and these other three. He said they falsified theirs, he falsified his. He said, you terminate them. I said yes, sir.
>
> He said what would you have done if this contract wasn't under negotiation and the Union wasn't in here? I said, well, I would have terminated them. He said well that's what you do now. I said yes, sir. That was the extent of that conversation.

C. *The 8(a)(5) Allegations*

The complaint alleges that the Union requested, and Respondent failed to furnish, information regarding the discharges of bargaining unit employees Malcolm Jones, David Gibson, and Gene Donaldson.

During the hearing the parties agreed that by letters dated January 4, 1990, the Union requested information including the personnel files of Malcolm Jones, David Gibson, and Gene Donaldson and,

> 2. The Motor Vehicle Report (MVR) records of all bargaining unit employees over the past two (2) years.
>
> 3. The names of all employees disciplined for MVR's within the past two years. Dates and description of each discipline of those who failed to report traffic violation convictions within the thirty day time frame.

Respondent, in response to the Union's request, supplied the Union with a number of documents which were received in evidence as General Counsel's Exhibits 2(a)–2(ddd). However, Respondent's counsel agreed that that response did not include

> every single piece of documentation which the Union had requested initially and therefore it is incomplete with response to all the MVR's and all the ROV's.

James Adler, the Union's out-of-state director, testified that the Union and Respondent held their first negotiation session on January 9, 1990. Adler testified that he brought up the discharges of Donaldson, Gibson, Nix, and Jones and,

> Larry McDonald, Company Chairman, said that he was not going to discuss anything about that subject and that if we wanted to pursue it any further we'd have to pursue it through other means, including the Board. We went on about our business.

On January 11, 1990, the Union wrote Respondent regarding bargaining unit employees,

> I do hereby request a meeting with Company representatives in order to engage in bargaining with reference to the discharges of employees Ernest Donaldson, David Gibson, Malcolm Jones, and Wayne Nix.
>
> Inasmuch as these employees are now unemployed, time is of utmost importance. Therefore, please, without delay, contact me so that we may promptly schedule a meeting for this purpose.

On January 23 Respondent answered:

> This letter is to advise you that Ryder Distribution Resources, Inc. refuses to bargain over the discharges of E. Donaldson, D. Gibson, M. Jones and W. Nix as you requested in your letter of January 11, 1990.
>
> It is a requirement of the Department of Transportation and Ryder Distribution Resources that an employee report his record of violations is writing at the time of his annual review (as required under D.O.T.). Donaldson, Jones and Nix failed to report moving violations which had occurred during the past twelve months, and Gibson did not report a citation for driving under the influence for which his driving privileges were temporarily suspended. This information was provided to the Company as a result of a periodic Department of Motor Vehicle check.
>
> Each of the four individuals was advised of the basis for his termination, none of whom offered any denial.

II. CREDIBILITY

David Gibson: David Gibson testified to matters which were obviously harmful to his position. For example, Gibson admitted that he did not mention his DUI conviction on his ROV form, because he did not want his employer to know about that conviction.

Both James Waggoner and Thom Bracewell denied testimony by Gibson regarding Gibson's support of the Union. According to Waggoner, Gibson told him that he would not support the Union. Bracewell testified that Gibson did not indicate to Bracewell that he would have voted for the Union if he had arrived before the polls closed.

Gibson's testimony in most respects corroborates that of others including, in the case of his suspension, that of Ashley and Bracewell.

Respondent, in its brief, points to substantial conflicts between witnesses regarding the discharge of Gibson.

As to the conversation at Gibson's discharge, there were two major areas of disagreement. Both Gibson and Ashley testified that Waggoner commented to the effect that matters were being handled differently because of the Union's presence. As to the second area of disagreement Gibson and Ashley claimed that Waggoner was told by Ashley, that he would have to take action against most of the drivers if he was going to engage in the type of disciplinary action he was imposing on Gibson.

As to the second area of dispute, Gibson's testimony in that regard was,

> Gene came back and said, well, if that's the case you're gonna have to let everybody here go.

Ashley's testimony in that regard was,

> I told Waggoner if you fire this man for this little rinky dink thing you're gonna have to fire eighty percent of your fleet. He said, I hope not but if I do I will.

Waggoner testified as to that point, that, after Ashley said he could not believe they were going to fire Gibson over a silly little violation, Waggoner responded,

> Gene, I've got to be fair. I've got to treat everyone the same. I cannot treat one person different from the other.

The above shows substantial agreement that the conversation included the subject of how the policy being used in the discharge of Gibson would affect the remaining employees. I do not find the different versions of this particular issue to be significant.

As to the first area of dispute, Gibson testified:

> [Ashley] said Jim can't you give the guy a warning letter or something? Jim said, well, it's out of my hands. He said if the Union weren't in, he said, I probably could do something, he said, but the Union is in.

Ashley testified:

> [Waggoner] said you guys wanted a union and this is what you got and things are going to be done on a different scale than they've been done before.

Waggoner denied that the word union was mentioned in that conversation.

Thom Bracewell testified that he did not hear Waggoner use the word union in the above conversation. His account of the conversation corroborated Waggoner's version.

As to this particular issue there is substantial agreement between Waggoner and Bracewell and between Gibson and Ashley. Although Gibson and Ashley recalled different words, both recall that Waggoner indicated that the disciplinary procedure would be handled differently now that the Union is in.

I credit Gibson and Ashley on both points. As to the first area of dispute, I note and I rely in part on the fact that the record as a whole establishes that Respondent handled Gibson's discharge differently than it normally would have if the Union had not been on the scene. The testimony of Lawrence McDonald, Respondent's manager of labor relations, shows that he becomes involved in discharge decisions only when union activity is ongoing and in those situations he applies a stricter standard than might be applied by local terminal managers when no union activity is present. Waggoner's statements to Gibson and Ashley simply reflect what was in fact the case.

On the basis of the record, including the matters mentioned above, and especially on the basis of my observation of his demeanor, I credit the testimony of David Gibson.

Ernest E. Donaldson: On the basis of the record and my observation of Donaldson's demeanor, I credit his testimony.

Ernest Donaldson demonstrated no basis on the record to discredit his testimony. He answered responsively to both direct and cross-examination. His answers under cross included admissions against his interest including his admission regarding regulations for completing ROV reports.

Donaldson admitted on cross-examination, that he had not included in his affidavit, testimony regarding his second conversation with Transportation Manager Waggoner following his discharge. In his affidavit Donaldson testified that he was not present during the meeting between Waggoner and Gene Ashley.

Gene Ashley appeared to be acting in the capacity of union steward on several occasions during material times.

At the hearing Donaldson explained there was a subsequent meeting between Ashley and Waggoner and that he was not present during that meeting. However, Donaldson testified there was a meeting before he left the terminal after his discharge, involving himself, Waggoner, and Gene Ashley. Donaldson admitted that he had not recalled during his prehearing affidavit testimony, about the conversation involving Ashley, Waggoner, and himself before he left the terminal on April 6.

I found Donaldson's explanation to be persuasive.

Ashley's testimony regarding the occurrences during Donaldson's discharge corroborates that of Donaldson. Waggoner, on the other hand, denied there was a conversation involving himself, Ashley, and Donaldson, after he followed Donaldson out to the parking lot after he had discharged Donaldson.

As shown below, I discredit Waggoner's testimony, including that mentioned above, which conflicts with credited testimony.

William Dewayne Nix: The parties stipulated that Nix's affidavit did not include a comment which he included in his testimony regarding his discharge conversation with Thom Bracewell. According to his testimony Bracewell mentioned that the innocent would get hurt because of the Union. The parties stipulated that Nix's prehearing affidavit did not include those comments about the Union. During the discussion regarding the stipulation it was mentioned that the affidavit version of the discharge conversation was as follows,

> At the time I was discharged Bracewell said he would give me an excellent recommendation. He showed me a moving violation report captioned by the State, showed my ticket on 4/27/89. Thom said there was nothing he could do about it.

However, the parties, during the stipulation discussion indicated there was mention in the affidavit, of the Union in

the conversation between Nix and Waggoner on the day of Nix's discharge.

I credit Nix's testimony on the basis of the record and my observation of his demeanor. However, due to the fact that Nix did not recall that Bracewell mentioned the Union during his conversation at the time of Nix's discharge, I shall not credit that portion of Nix's testimony. I do credit Nix as to his conversation with Waggoner which occurred shortly after the conversation between Nix and Bracewell.

Malcolm Jones: Jones showed some confusion regarding various traffic citations he received in 1988 and 1989. The MVR he was shown at discharge shows a citation of September 5, 1988, and the court as GA0000999. That apparently refers to a matter in Georgia. However, Jones recalled that citation occurred in Virginia.

Apparently Jones confused the September 1988 citation with one he received in August 1989. The August 1989 citation is not material to these proceedings.

As to these proceedings, it is not material whether the September 1988 citation occurred in Georgia or, as Jones recalled, in Virginia. However, his confusion does tend to show that Jones' recollection was faulty.

Additionally, the above-mentioned confusion calls into question Jones' testimony regarding Respondent's knowledge of his September 1988 traffic citation. Jones testified that he received correspondence from Virginia regarding the fine he had paid. If, as it now appears, that traffic violation occurred in 1989, then the record fails to show that Respondent had prior knowledge of the citation which was omitted from Jones' June 8, 1989 ROV.

In view of the above, I do not credit Jones' testimony to the effect that he told Respondent about the traffic conviction which was left off his ROV. In other regards I credit Jones' testimony on the basis of the record and my observation of his demeanor.

Gene Ashley: The record shows that Ashley's cross-examination was generally consistent with his direct testimony.

Respondent, in its brief, points out that Ashley's testimony under cross differed from his direct testimony regarding conversations with James Waggoner during the discharge of Donaldson. On cross, Ashley recalled an additional comment he made to Waggoner to the effect of, if Waggoner was going to discharge Donaldson, he would have to take similar action against 80 percent of his fleet.

Respondent is correct.

Moreover, that comment by Ashley is almost identical to a comment he recalled Waggoner making during conversations over the discharge of David Gibson.

Gibson also recalled that Ashley told Waggoner that he would have to take action against the fleet of drivers similar to what he was taking against Gibson.

As to comments about taking similar action against the fleet of drivers or against 80 percent of the fleet, there is a high likelihood that Ashley was confusing the conversations involving Donaldson with the ones involving Gibson.

In other regards, the testimony of Ashley is consistent with the testimony of Donaldson and Gibson.

There was no showing of other inconsistencies between Ashley's direct testimony and his cross-examination testimony or with his prehearing affidavits. Ashley did demonstrate strong feelings regarding the issues included in his testimony and, at times, he was rather hostile in his response to Respondent's counsel.

I credit the testimony of Ashley on the basis of the record and my observation of his demeanor to the extent it does not conflict with other credited testimony. In that regard, to the extent there is some conflict between the testimony of Ashley and that of Gibson, I credit Gibson. As to the matter of the discharge conversation regarding Donaldson, I credit the testimony of Donaldson.

Lawrence McDonald: McDonald testified that he was the deciding official in Respondent's discharge of Donaldson, Gibson, Nix, and Jones. However, the record revealed that McDonald simply okayed the decision of James Waggoner to discharge those employees.

On cross-examination it was revealed that McDonald did nothing to independently check the circumstances of Respondent's past practices regarding other inaccurate ROVs.

McDonald admitted that he had submitted two position statements to the Regional Office of the NLRB regarding this matter. In the first of those position statements, McDonald incorrectly stated that Gibson was discharged because he failed to list five convictions, including two DUI convictions, on his ROV.

When asked about the discrepancy between his testimony and his first position statement regarding the discharge of Gibson, McDonald testified,

> One DUI is sufficient. Falsification was sufficient as was a DUI in my book and that's what I made my decision on. I didn't ask if it was one, two, three, four, five.

McDonald's cross-examination also revealed that rather than make the decision to discharge Gibson, he actually phoned Waggoner and asked him what became of that case. Waggoner told him that Gibson had been terminated.

That testimony of McDonald was critical as to the overall discharge issue and especially regarding the matter of disparity. In that regard McDonald's above-mentioned testimony was that the DUI conviction would have been sufficient to discharge Gibson. However, when confronted with Respondent's action of only placing a driver named Ed Kelly on probation, rather than discharge, for a DUI conviction, McDonald testified that he was unfamiliar with that matter. McDonald admitted that there may have been instances of DUI convictions other than Kelly, that he was unfamiliar with.

In fact, when asked about other matters, McDonald could only recall one case, that involving Joseph Sparrow in Georgetown, Kentucky, where another driver had been discharged because he failed to list traffic violations on his ROV. McDonald could not recall whether a union campaign was ongoing at the time of Sparrow's discharge in Georgetown and McDonald could not recall what other matters were involved in Ryder's assertion in Sparrow's discharge letter that the discharge was based on falsifying his applications and his ROV.

McDonald demonstrated other areas of poor knowledge regarding the discharges alleged in this matter. For example he testified that he did not know whether Gibson's DUI conviction was based on off-duty activity in a personal vehicle.

I was not impressed with McDonald's demeanor. I do credit certain portions of his testimony as admissions against

interest, including his testimony that he decided to discharge the four alleged discriminatees.

James Waggoner: Waggoner appeared to have difficulty under cross-examination when he was asked to explain why other situations involving failure to list traffic citations on employee ROVs did not result in discipline. In some of those cases Waggoner indicated the matter was not one he reviewed and in others, where he was the acting official, he demonstrated an inability to recall the facts.

The record showed other cases of employees having DUI and other traffic convictions. Waggoner explained that in the case of driver Kelly being convicted of DUI, he acted on Kelly's behalf to keep Kelly from being fired because of Kelly's past record.

Waggoner did not explain why he did not give similar consideration to Gibson.

As to an employee named Holloway who had a DUI conviction in 1986 but was not disciplined by Respondent, Waggoner was unfamiliar with the case. He testified that the matter was handled by a lower level supervisor.

As to a number of other drivers, who had failed to list traffic convictions on their ROVs, Waggoner explained those matters were either not handled by him but by a lower level supervisor, or that he signed the disciplinary action papers but offered no explanation of why that situation was treated differently from the instant matters.

Waggoner's testimony conflicted with that of David Gibson, Ernest Donaldson, Malcolm Jones, Wayne Nix, and Gene Ashley.

In view of the full record and my observation of Waggoner's demeanor, I do not credit his testimony to the extent it conflicts with credited evidence.

Thom Bracewell: Bracewell testified in conflict with some of the testimony of David Gibson, Gene Ashley, and Wayne Nix.

Although his testimony was generally reliable, I notice that Bracewell avoided testimony which conflicted with the previous testimony of James Waggoner. To that extent and in other areas where his testimony conflicts with credited evidence, I do not credit Bracewell.

III. FINDINGS

The complaint alleges that Respondent engaged in 8(a)(1) violations by interrogation, threats of loss of jobs, and creating the impression of surveillance.

Interrogation

James Waggoner: The General Counsel argues in his brief that James Waggoner's comments to David Gibson around the time the Union started its campaign, and to Malcolm Jones about 3 weeks before the election, constitute unlawful interrogation.

As shown above, David Gibson testified about a phone conversation he had with Distribution Manager Waggoner when the Union first started up. Gibson testified that it was before the petition, which was filed on September 12, 1989, although he could not recall whether it was ''a week, two weeks or what before,''

> The first time is when the Union was first started up. I was in Virginia and I called in and Jim Waggoner has a phone and they said that he wanted to talk to me. I asked him about what and he said, well, I guess you heard about the Union? I said, yeah, I heard something about it once.

Also, as shown above, Malcolm Jones testified about a conversation about 3 weeks before the election,

> During one of my trips I was talking to the dispatcher on the phone and after I finished talking to the dispatcher Jim Waggoner came on the phone and he was asking me had I heard about the Union. I told him yeah. . . .

As shown below, James Waggoner coupled his interrogation of employees regarding their knowledge of union activity, with threats of loss of jobs. Interrogation in such a coercive atmosphere constitutes illegal conduct. *Taylor Chair Co.*, 292 NLRB 658 (1989).

Threat of Loss of Jobs

James Waggoner: During the phone conversation mentioned above under interrogation, the full conversation as recalled by David Gibson involved matters which the General Counsel contends constitute a threat of loss of jobs. As shown above, Gibson testified that it was before the petition, which was filed on September 12, 1989, although he could not recall whether it was ''a week, two weeks or what before,''

> The first time is when the Union was first started up. I was in Virginia and I called in and Jim Waggoner has a phone and they said that he wanted to talk to me. I asked him about what and he said, well, I guess you heard about the Union? I said, yeah, I heard something about it once.
>
> I told him that Gene [Ashley] had stopped and introduced the Union to me at the gate as I was leaving, going home. So he said, well, I guess you know if the Union gets in we're out. I said, well, I don't know about that.

As shown above earlier in this decision, Gibson also testified about a second occasion, just before the Union was voted in, when he had a conversation with Distribution Manager James Waggoner. Gibson was in the office to be dispatched along with employees Lett and Mobley,

> The time we were talking in his office he said that AT&T did not want a union trucking company in because if they go on strike we would have to strike, too. . . . .
>
> We started off talking about a raise and Jim told us that we wouldn't—that we would not get a raise at that time. Then he told us about a penny that we would get but we would lose something else some place else.
>
> Then he said, well, you don't need a raise no way because you're trying to get this union. He said all this is out of my hands now. Then from that to Mobley, and we all was just talking.
>
> John—So he got up and got some documents or something and brought back in and showed us where Ryder doesn't make the money that we drivers think they make. He showed us the documents and all and

> then we started talking about the different things we had to pay.
>
> The conversation just went about a lot of different things but the Union also was involved.
>
> . . . .
>
> Well, he explained to us how that AT&T did not want a union trucking company in and he was explaining the disadvantages that it would be to AT&T if a union trucking company got in.
>
> . . . .
>
> Well, the disadvantages about if—if the Union—if the trucking company get in that is union, AT&T being union, if they go on strike we would have to strike. This is the reason that AT&T did no want a trucking company that is union handling their contract and they would probably forfeit the contract.

Also, as shown above, Malcolm Jones testified about a conversation about 3 weeks before the election. That full conversation as recalled by Jones, included the following,

> During one of my trips I was talking to the dispatcher on the phone and after I finished talking to the dispatcher Jim Waggoner came on the phone and he was asking me had I heard about the Union. I told him yeah. He said it wouldn't be a good idea if the Union came in because if the Union came in AT&T would cancel their contract with us.

Gene Ashley, who is currently employed by Respondent, testified about several conversations with James Waggoner. In the second of those conversations, according to Ashley, which occurred in early September,

> We was sitting there talking about what was going to happen when the Union come in. He was afraid that AT&T did not want union drivers in there, that they had stipulations in their contract that we could not become in the same union they are.
>
> He said what Ryder would just take their trucks out against the wall, strip the sides off or them, take them out of service and put them up for sale and Thom and himself and me and all of us would be out of a job.

There was a third conversation involving Ashley and Waggoner in September before the election,

> Mike Holly was there. We stayed after work and was talking. [Waggoner] says Ryder is not going to sign a contract. He says all you're going to do is put the forty-two people out of work.

On cross-examination, Gene Ashley testified about a conversation with Jim Waggoner in Waggoner's office before the election. Ashley went into Waggoner's office to ask Waggoner about having Ashley's truck repaired. Waggoner brought up the Union during the conversation,

> He told me you guys are gonna have to get away from this union. You're gonna have to get it decertified. It's not gonna do that. I'm gonna lose my job. Thom's gonna lose his job. You're gonna lose your job. We're all gonna be out of a job.

The above evidence shows that Respondent through its distribution manager, James Waggoner, threatened its employees with loss of jobs if they should select the Union as their bargaining agent. That conduct is illegal. It constitutes violations of Section 8(a)(1) of the Act.

Thom Bracewell: The General Counsel stated in his brief there was no evidence included in the record supporting the allegations in paragraph 8 of the complaint as to Bracewell. Those allegations are dismissed.

Creating the Impression of Surveillance

The General Counsel admitted there was no evidence supporting the complaint allegations of creating the impression of surveillance. Therefore, that allegation is dismissed.

The complaint alleges that Respondent discharged four employees in violations of the Act: As to David Gibson, the credited evidence, which is set out above, shows that both Waggoner and Bracewell knew of Gibson's prounion activities.

Gibson was convicted of DUI. That is a serious offense and I do not intend to minimize the seriousness of that matter. However, the evidence shows that Respondent did not normally discharge employees because of DUI convictions.

There was no showing that Respondent discharged anyone because of a DUI conviction before it discharged Gibson.

As shown below, in two earlier cases of DUI convictions, two drivers, Kelly and Holloway, were not discharged. In fact Holloway was not even disciplined.

The law does not permit an employer to regulate the degree of punishment on the grounds of whether an employee favors or opposes a union. Regardless of the seriousness of the offense, it is not permissible to treat employees in one manner when there is no union activity involved, and in a more strict fashion when a union is involved. That is what occurred here.

In the case of David Gibson, the evidence shows that Respondent was aware of his prounion feelings. When it was discovered that Gibson had been convicted of a DUI offense, Respondent seized on that opportunity to discharge him. In order to discharge Gibson, Respondent departed from its past practice of permitting local management to deal with traffic offenses and inaccurate ROVs. Respondent also departed from its past practice of being lenient toward traffic offenses, including DUI, and falsified ROVs.

As shown above, Gibson's situation came to the attention of Respondent on December 21, 1989. At that time Gibson was suspended. The evidence shows that after suspending Gibson, Respondent learned that three additional employees had falsified their ROVs. When Respondent decided to go ahead and discharge Gibson, it also determined that it would be necessary to cover its tracks and take similar action against all unit employees with inaccurate ROVs. On that basis Respondent discharged Donaldson, Nix, and Jones.

Moreover, in addition to evidence showing that Donaldson, Nix, and Jones, were fired in order to cover Respondent's tracks, the evidence shown above which is common to all the dischargees, shows that the General Counsel proved a violation on other grounds.

Three of the four alleged discriminatees were discharged on January 3, 1990. However, the first disciplinary action was awarded to David Gibson around December 21, 1989, when Gibson was suspended on the grounds that Gibson had

failed to include a DUI citation on his ROV. Gibson was discharged, but the actual discharge did not occur until approximately 2 weeks later.

Gene Ashley, who was acting in the role of union steward, complained that if Respondent was going to take action against David Gibson for failing to include all citations on his ROV, it would be necessary to take actions against others. Respondent took action to discharge three others, plus to discharge Gibson.

In regard to the alleged violative discharges, there are some issues which are common to all.

As to the question of knowledge, James Waggoner testified that he was unaware of the union activities of any of the four alleged discriminatees. In regard to that point, the question of knowledge depends on credibility determinations. Moreover, the General Counsel contends that Respondent's discharge actions show a decision to change its policy regarding the four alleged discriminatees because of the Union's success in the election. On the basis of that theory, Respondent's knowledge of the alleged discriminatees' union activities, is not critical.

One of those issues common to all involves the question of disparity (i.e., did Respondent treat the alleged discriminatees in the same manner it treated other employees?).

In regard to the issue of disparity, one question involves the issue of Respondent's normal procedure. In that light it will be important to compare Respondent's treatment of employees Donaldson, Gibson, Nix, and Jones, with its regular disciplinary procedure.

Gene Ashley testified about Respondent's disciplinary procedure:

> I've been told it and told it and told it. As the first question I asked when Ryder bought us out, took us over October 1, '86, Jim Waggoner went to Miami to a seminar and he come back and we asked him what the procedures were and everything and discipline—
>
> . . . .
>
> We asked him about the disciplinary procedure, if it would be the same as Sanders (the predecessor employer), you know. He said, yes, the three warning letters, progressive discipline system would be in effect, with the exception of drinking on Company equipment, Company property, fighting on our customer property, willful destruction of Company or customer property. He stuck to that line until recently.
>
> . . . .
>
> For the offenses it would be termination, no warning. He did use it on some of them.
>
> Q. Did he say those were the only offenses that would result in immediate termination?
>
> A. That is right.

None of the four alleged discriminatees were disciplined in accord with the system outlined in Ashley's testimony. All were discharged without the benefit of earlier disciplinary action including three warning letters. There was no effort on the part of Respondent to use progressive disciplinary measures. Even in the case of David Gibson, who was first suspended, there was no showing of a progressive discipline system. Gibson was suspended on Respondent's assertion that it was looking into the matter. Subsequently, without Gibson having the benefit of any intervening action, he was discharged over the same allegations that led to his suspension.

Additionally, the following credited testimony shows that the employees at Respondent's Norcross facility were told that the standards would be tightened because they had selected the Union.

Ernest Donaldson testified, as shown above, that on January 3, 1990, he was called into Distribution Manager James Waggoner's office and told that he had failed to include his April 5 speeding ticket on the April 6 ROV. Donaldson was told that he was being discharged because of that omission. According to Donaldson he had two conversations with Waggoner regarding his discharge and the Union before he left Respondent's property:

> I was told then [by Waggoner], well, I told you about this Union. I did not reply and went and got my stuff out of the truck. . . .
>
> I told Mr. Ashley that they had dismissed me. Me [sic] and him went back upstairs to Mr. Waggoner's office and he asked him about my case and—
>
> . . . .
>
> Gene Ashley asked Mr. Waggoner about discharging me and asked him if he could put me on a paper suspension. [Waggoner] said, y'all asked for this Union. It's gonna be by the book now.

Gene Ashley also testified about the above comments by Waggoner. After Ashley asked Waggoner to put Donaldson on paper suspension,

> [Waggoner] told me, no, it's not gonna be like that no more. You guys wanted a union. It's gonna be different from now on.

Again, as shown above, David Gibson testified about his discharge conversations,

> I asked [Jim Waggoner in the presence of Thom Bracewell and Gene Ashley] what was the—what were their decisions. He said, buddy, I'm gonna have to let you go. Gene said just like that? He said Jim can't you give the guy a warning letter or something? Jim said, well, it's out of my hands. He said if the Union weren't in, he said, I probably could do something, he said, but the Union is in.
>
> Gene came back and said, well, if that's the case you're gonna have to let everybody here go. He said, if that's what I have to do, that's what I'll do. He told me that Thom Bracewell didn't have time to make up—give me a dismissal notice where they had let me go. He said, well, they'll send me one in the mail.

Gene Ashley testified that he told Waggoner during the above meeting,

> I told Waggoner if you fire this man for this little rinky dink thing you're gonna have to fire eighty percent of your fleet. He said, I hope not but if I do I will.
>
> . . . .

> [Waggoner] said you guys wanted a union and this is what you got and things are going to be done on a different scale than they've been done before.

Malcolm Jones testified that on January 3, 1989, he was told to come in and see Thom Bracewell,

> So I went up to the office. He called me in and he informed me that an employee had been terminated for not reporting a ticket and some drivers were complaining that if one driver was gonna be terminated for this then all of them that hadn't reported their tickets should be terminated also. He said due to that fact that he was gonna have to let me go.

William Nix testified that before leaving the terminal following his discharge, he ran into James Waggoner:

> I asked Jim what the heck was going on. He said, I told you guys when you started this union a lot of innocent people is gonna get hurt and this is part of it. I said, Jim, what's gonna happen? He said, I don't know. He said, before we could sit down and hash this out but now it's out of my hands.

As to the question of timing, the record shows the Union filed its representation petition of September 12, 1989.

An election was held on October 2, 1989.

On October 11, 1989, the Union was certified as representative of the bargaining unit employees.

On December 21, 1989, Respondent suspended David Gibson.

On January 3, 1990, Respondent discharged Donaldson, Nix, and Jones. On January 4 Respondent discharged Gibson.

From January 9 through May 30, 1990, Respondent negotiated with the Union.

Respondent defended the above through the testimony of Lawrence McDonald, James Waggoner, and Thom Bracewell.

McDonald testified that he only followed regulations in deciding to discharge the four alleged discriminatees.

However, McDonald's testimony showed that only when he is asked by a terminal about a particular discharge does he become involved in that decision. When a terminal is involved in a union campaign, McDonald instructs the terminal management to advise him before disciplining an employee. In those instances McDonald applies rigid rules. His testimony in that regard included the following,

> I do [have a role in applying DOT regulations specifically 391] only insofar as if I'm questioned as to whether or not we should accept, tolerate, excuse an individual or not comply with the regulations under 391. My view is fairly rigid on that we can't do that because the bigger picture is the jeopardy, the spot checks by the DOT and the audits and so forth.

The testimony of Lawrence McDonald supports other evidence in the record illustrating that Respondent applied stricter standards when its employees were involved in union activity. McDonald testified that when there is a union campaign, he becomes involved in discharge decisions and he applies a ''fairly rigid'' standard under the DOT regulations. McDonald does not independently check as to the terminal's past practice. As shown by his testimony, he simply applied his interpretation of the DOT regs. His testimony was to the effect that employees were summarily discharged because of inaccuracies in their ROV, when McDonald was involved in the decision.

McDonald admitted that even though he interprets the DOT regulations to require discharge if an employee falsifies his ROV, the DOT regulations do not include such a rule:

> THE COURT: . . . It appears to me that there is no specific (DOT) rule that drivers who falsify ROV's will be discharged or disqualified; am I right?
>
> THE WITNESS: You are right. . . .

Moreover, even the testimony of Respondent's witnesses illustrated that the Donaldson, Gibson, Nix, and Jones matters were handled differently.

Distribution Manager Waggoner was asked about other problems with drivers.

James Waggoner testified about an earlier situation when a driver was convicted of DUI—Driver Ed Kelly. Kelly came to Waggoner about his conviction. Waggoner told Kelly the DUI was a terminating offense. However, Waggoner agreed to take the matter up with his boss:

> So I went to Mr. Jerry Bauman and I told him, I said, I've got a driver that's got a DUI. Under Company policy that is a terminating offense but he wanted me to come to you and plead his case and what should we do. He proceeded to ask me questions about the employee; if he was a good employee; if we had any other convictions on him; if we had anything that was wrong, you know, any—what kind of employee he was.
>
> I proceeded to tell him that I never had any problems out of him. He did his work. He did his job and there was no problems at all. He said you tell him that we will keep him on as long as he's got his drivers license. I said, well, he does—and I made sure of that. As long as he's got his drivers license we will keep him on and he can drive for us. But if he bats an eye the wrong way, he's gone.

Waggoner recalled that he did not tell McDonald about the case involving Ed Kelly, when he and McDonald were discussing the discharges of Gibson, Donaldson, Nix, and Jones.

The record showed other cases of employees having DUI and other traffic convictions. As to an employee named Holloway who had a DUI conviction in 1986 but was not disciplined by Respondent, Waggoner was unfamiliar with the case. He testified that the matter was handled by a lower-level supervisor. As to a number of other drivers, who had failed to list traffic convictions on their ROVs, Waggoner testified that those matters were either not handled by him but by a lower-level supervisor, or that he signed the disciplinary action papers but he offered no explanation of why that situation was treated differently from the instant matters.

I find that even Respondent's evidence illustrates that it did not follow its normal routine when it discharged the four alleged discriminatees. Routinely traffic convictions are handled by distribution supervisors and convictions, even including DUI convictions, do not routinely result in discharge. The record shows that employees Kelly and Holloway were not discharged even though they were convicted of DUI. In

the case of Kelly, James Waggoner pleaded Kelly's case because of Kelly's good record. However, Kelly's record was not shown to have been better than that of the alleged discriminatees.

Routinely so-called falsifications of ROVs do not result in discharge. Those matters are normally handled by the distribution supervisors. The record illustrated earlier cases of inaccurate ROVs were handled without discharges.

Both Waggoner and McDonald admitted that it is only during a union campaign that standard procedure involves calling on McDonald to make the decision regarding employee discipline. Waggoner also admitted that he normally does not become involved in ROV falsifications. However, in this case, because, according to Waggoner, of the union campaign, he became involved along with McDonald.

The record showed that because of the involvement of McDonald and Waggoner, a stricter standard was applied, resulting in the discharge of Donaldson, Gibson, Nix, and Jones.

The evidence demonstrated that Respondent imposed the stricter standard because its employees selected the Union as their bargaining representative and, but for the imposition of that stricter standard, it would not have discharged its employees Donaldson, Gibson, Nix, and Jones. I find that the General Counsel has proved a prima facie case that those discharges resulted from the employees' protected union activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Respondent failed to prove that it would have discharged either Donaldson, Gibson, Nix, or Jones, but for its employees' protected union activity. The record illustrated that other employees were not discharged because they either received traffic convictions, including in at least two cases DUI convictions, or because they failed to include traffic convictions on their ROV. *Taylor Chair Co*., 292 NLRB 658 (1989); *Philips Industries*, 295 NLRB 717 (1989); *D & D Distribution Co*., 277 NLRB 909 fn. 1 (1985); *Ann's Laundry*, 276 NLRB 269 (1985); *NLRB v. General Warehouse Corp*., 643 F.2d 965 (3d Cir. 1981).

In fact the only case in which another employee was shown to have been discharged for a similar offense, occurred after the discharges in this instance.

As to Ernest Donaldson, on the morning the hearing opened in this matter, Respondent offered and Donaldson accepted reinstatement with full seniority. In his opening statement Respondent's attorney stated that in preparing for this hearing, Respondent discovered that Donaldson completed his ROV at a date before his speeding conviction. In view of that discovery, Respondent offered Donaldson reinstatement with full seniority. Donaldson admitted that he did not recall telling Respondent at the time of his discharge, that he had completed the April 6 ROV before his conviction.

James Waggoner admitted that he made a mistake in discharging Donaldson, by looking to the date of Donaldson's violation rather than to the date of his conviction. Although Donaldson's April 5 speeding violation occurred before Donaldson completed his ROV on April 6, Donaldson was not convicted until after his ROV was completed.

The form Donaldson completed on April 6 includes standard language directing each driver to list all traffic violation convictions.

Despite Respondent's error, the evidence shows, as mentioned above, that Donaldson, as well as the other three dischargees, was discharged because of the Respondent's unlawful actions.

The complaint alleges that Respondent engaged in 8(a)(5) violations by refusing to bargain regarding discharge of bargaining unit employees: The evidence is not in dispute that Respondent refused to bargain regarding the discharges of employees Donaldson, Gibson, Jones, and Nix, following requests by the Union. As shown above, Respondent specifically refused to bargain in that regard at the negotiation session on January 9, 1990, and by letter dated January 23, 1990.

At the time of the Union's requests to bargain over the discharges, the Union was the certified representative of a bargaining unit which included all four discharged employees. Even though the parties had not negotiated to agreement at that time, the Union was the employees' exclusive collective-bargaining agent. Negotiations over termination of employment constitute a mandatory subject of bargaining.

> A grievance about a discharge is clearly a mandatory subject of bargaining. The Respondent discharged Chesky on 6 March. On 10 March the Union first asked the Respondent to meet and discuss the discharge. Additional written requests were made on 11 March and 24 March. The Respondent consistently declined these requests both orally and in writing. It was not until 11 April that the Respondent reversed its position and agreed to meet concerning Chesky's termination. Accordingly, we find that the Respondent's initial refusal and resultant delay in bargaining violated Section 8(a)(5). *Crestfield Convalescent Home*, 287 NLRB 328 (1987).

Here, Respondent never did agree to meet and discuss the discharges of Donaldson, Gibson, Nix, and Jones. By refusing to negotiate over the discharges Respondent engaged in conduct violative of Section 8(a)(5) of the Act.

The complaint alleges that the Union requested, and Respondent failed to furnish, information regarding the discharges of bargaining unit employees Malcolm Jones, David Gibson, and Gene Donaldson: Respondent agreed that it provided the Union with some, but not all, information requested by the Union regarding the discharges of Donaldson, Gibson, Jones, and Nix. As shown above Respondent admitted during the hearing that it had not supplied the Union with

> every single piece of documentation which the Union had requested initially and therefore it is incomplete with response to all the MVR's and all the ROV's.

Gene Ashley testified that on January 4, 1990,

> I requested their personnel files, a copy of their ROV's and MVR's for the past two years—including '89 and '88—and information of who they had disciplined and the type of discipline they received on employees for the past two years for this such thing.

Ashley signed and delivered the January 4, 1990 letters to Respondent mentioned above, which request the personnel

files of Malcolm Jones, David Gibson, and Gene Donaldson, and,

> 2. The Motor Vehicle Report (MVR) records of all bargaining unit employees over the past two (2) years.
> 3. The names of all employees disciplined for MVR's within the past two years. Dates and description of each discipline of those who failed to report traffic violation convictions within the thirty day time frame.

Ashley testified that Respondent supplied him with some, but not all, the information he requested. Ashley testified regarding the records he requested,

> I had asked for all forty-two drivers at the time, or forty-one, somewhere in that area. They sent me twenty-eight drivers. These fourteen drivers [listed on G.C. Exh. 21(a)] was [sic] left out.
>
> . . . .
>
> [G.C. Exh.] 21(b) is a letter I gave to you [counsel for General Counsel] stating that these employees—these fourteen or so—we had asked for them for both years 1989 and 1988. They had given us 1988 on them and nothing at all on '99—or '89 rather. I'm sorry.
>
> . . . .
>
> [G.C. Exh.] 21(c), these ten drivers here, their seniority dates are along beside of them. This is the list I gave you to tell you that they give us nothing for 1989. What they gave us was on the year 1988 but nothing for 1999. 1989. I'm sorry.

Ashley testified that Respondent did not supply him with the personnel files which he requested.

Respondent's manager of labor relations McDonald testified that he mailed the Union what he believed to be all the documents which the Union requested and that he discussed the matter with Joe Finn of the Union. Finn was in Arizona at the time and not in his office in Norcross, Georgia, where McDonald had mailed the documents. Although McDonald subsequently discovered that he had not supplied the Union with everything they requested, he admittedly has failed to remedy that oversight.

> It is well settled that a union is entitled to discovery-type disclosure, and a union's request for information respecting unit employees is presumptively relevant to the union's performance of its duties as the collective-bargaining representative of the unit. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). The presumption is rebuttable. However, Respondent has offered no evidence whatsoever to rebutt that presumption. [*Accurate Die Casting Co*., 292 NLRB 982, 990 (1989).]

The Union's request for information relevant to the discharge of bargaining unit employees is presumptively relevant to the Union's bargaining obligations, especially in view of the Union's requests to bargain regarding those discharges. The Respondent offered no evidence to rebut that presumption. *GHR Energy Corp*., 294 NLRB 1011 (1989).

CONCLUSIONS OF LAW

1. Ryder Distribution Resources, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Communication Workers of America, Local No. 3263 is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union has been at times material the exclusive representative for the purposes of collective bargaining of the following employees:

> All regular full time drivers employed by the Respondent at its AT&T Account in Norcross, Georgia, but excluding all professional employees, clerical employees, dockmen, guards and supervisors as defined in the Act.

4. Respondent, by interrogating its employees about their union activities, and threatening its employees with loss of jobs, because of their union activities, violated Section 8(a)(1) of the Act.

5. Respondent, by discharging and refusing to reinstate Ernest E. Donaldson, David Gibson, Malcolm Jones, and William D. Nix, violated Section 8(a)(1) and (3) of the Act.

6. Respondent, by refusing to bargain with the Union as the exclusive collective-bargaining representative of its employees in the above-described bargaining unit, after the Union requested bargaining over the discharges of employees Donaldson, Gibson, Nix, and Jones, violated Section 8(a)(5) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to meet and bargain with the Union, as exclusive collective-bargaining representative of its employees in the above-described collective-bargaining unit, on request, about, among other things, the discharges of employees Ernest E. Donaldson, David Gibson, Malcolm Jones, and William D. Nix.

As I have found that Respondent unlawfully discharged Ernest E. Donaldson, David Gibson, Malcolm Jones, and William D. Nix, I shall recommend that Respondent be ordered to offer Donaldson, Gibson, Jones, and Nix immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

Respondent must expunge all references to the discharge of Donaldson, Gibson, Jones, and Nix from their records and notify them that those records have been expunged and that their July 14, 1989 discharge will not be used against them.

I shall further recommend that Respondent be ordered to make Donaldson, Gibson, Jones, and Nix whole for any loss of earnings they suffered as a result of the discrimination against them. Backpay shall be computed in the manner described in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with

interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Ryder Distribution Resources, Inc., Norcross, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating and threatening its employees with loss of jobs because of their union activity.

(b) Discharging, refusing to reinstate, and otherwise discriminating against employees because of their union or other protected concerted activities.

(c) Refusing to bargain with Communications Workers of America, Local No. 3263, regarding the discharges of employees Donaldson, Gibson, Nix, and Jones, or by failing to supply the Union with information requested by the Union which is relevant to the Union's bargaining responsibilities.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer its employees Donaldson, Gibson, Jones, and Nix immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs without prejudice to their seniority or other rights or privileges previously enjoyed, and make Donaldson, Gibson, Jones, and Nix whole for any loss of earnings, plus interest, suffered because of its illegal action.

(b) Remove from its files any reference to the termination of Donaldson, Gibson, Jones, and Nix and notify Donaldson, Gibson, Jones, and Nix in writing that this has been done and that evidence of their unlawful terminations will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, and timecards, personnel records, reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Norcross, Georgia, copies of the attached notice.[3] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] Under *New Horizons*, interest is computed at the ''short-term federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment), shall be computed as in *Florida Steel Corp*., 231 NLRB 651 (1977).

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''